REMARKS

Amendments

Claims 12 and 19 are cancelled. Claim 80 is amended to delete biphenyl from the definition of Ar. Claims 21 and 39 are amended to recite Markush groups in the format "R is A, B, C, or D".

Rejection of Claims 11, 12, 21, 39 and 80 under 35 USC 112, second paragraph

Claims 11 and 12 are rejected on grounds that these claims recite that R^2 can be 2-thiophenyl, 3-thiophenyl, 3-furyl, or phenyl. This rejection is not applicable to claim 11 since this claim further defines R^1, not R_2. The recitation that R^1 can be 2-thiophenyl, 3-thiophenyl, 3-furyl, or phenyl has antecedent basis in the definition of Ar and Het in claim 1. As for claim 12, as noted above, this claim has been cancelled.

As for claims 21 and 39, it is asserted that these claims employ improper Markush language. This assertion is incorrect. As indicated in MPEP § 2173.05(h), alternative expressions are acceptable if they present no uncertainty or ambiguity with respect to the scope of the claims. This section further states that **one acceptable form** is "selected from the group consisting of." However, there is nothing to indicate or suggest that this is the only acceptable form of Markush language. The recitation "R is selected from A, B, C, and D" is a common and acceptable wording for Markush groups. There is nothing in the rejection that suggests this language in any way presents uncertainty or ambiguity. Thus, the language of claims 21 and 39 is not indefinite.

In any event, for purposes of expediting prosecution, claims 21 and 39 are amended to be in the format "R is A, B, C, or D". This language is clearly considered proper Markush language. See MPEP 2173.05(h)(I).

Regarding claim 80, it is asserted that biphenyl lacks antecedent basis. As indicated above, biphenyl has been deleted from claim 80.

Withdrawal of the rejection under 35 USC 112, second paragraph, is respectfully requested.

Rejection for Obviousness-type Double Patenting

Claims 1, 6, 11, 12, 14, 15, 19, 21, 22, 38, 39, and 48-80 are rejected on grounds of obviousness-type double patenting in view of claims 1, 5-7, 11, 15, 17, 38, and 40 of Serial No. 11/521,213. Applicants assume that the Examiner intended to refer to commonly assigned application Serial No. 11/525,213.

As indicated in the Office Action, this rejection is provisional, since neither application has been patented. In fact, Serial No. 11/525,213 has not even yet had a first Office Action on the merits. The instant application was filed before Serial No. 11/525,213. As indicated in MPEP § 804(I)(B), when there is a provisional rejection between two applications the rejection can continue to be made "as long as there are conflicting claims in more than one application **unless** that 'provisional' double patenting rejection is the only rejection in at least one of the application. Since all other rejections have been addressed by the amendments and arguments presented above, the Examiner should withdraw this provisional rejection in this earlier filed application and allow the application to issue without a terminal disclaimer, as described in MPEP § 804(I)(B).

Additionally, it is noted that claim 1 of Serial No. 11/525,213 recites that at least one R, R^1, R^3, R^4, and R^5 group is Het or OHet in which the Het group is selected from, in each case substituted or unsubstituted, azabicyclooctyl, oxa-azabicycloheptyl, diazabicycloheptyl, diazabicyclononyl, diazabicyclooctyl, pyrazolyl, dihydroimidazolyl, 1,4-diazepanyl, hexahydropyrrolopyrazinyl, and octahydropyrrolopyridinyl.

In view of the above remarks, withdrawal of the obviousness-type double patenting is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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